

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

---

UNITED STATES OF AMERICA,

Plaintiff,

v.

DIOVANNI CARTER,

Defendant.

---

Criminal Action  
No. 19-cr-10104-ADB-1

September 17, 2020

Pages 1 to 51

App No. 20-193

TRANSCRIPT OF SENTENCING HEARING  
BEFORE THE HONORABLE ALLISON D. BURROUGHS  
UNITED STATES DISTRICT COURT  
JOHN J. MOAKLEY U.S. COURTHOUSE  
ONE COURTHOUSE WAY  
BOSTON, MASSACHUSETTS 02210

JOAN M. DALY, RMR, CRR  
Official Court Reporter  
John J. Moakley U.S. Courthouse  
One Courthouse Way, Room 5507  
Boston, Massachusetts 02210  
joanmdaly62@gmail.com

1 APPEARANCES:

2 FOR THE GOVERNMENT:

3 PHILIP A. MALLARD  
4 GLENN A. MACKINLAY  
Assistant U.S. Attorneys  
5 U.S. Attorney's Office  
John J. Moakley Courthouse  
6 Suite 9200  
One Courthouse Way  
7 Boston, Massachusetts 02210  
617.748.3674  
8 philip.mallard@usdoj.gov  
9

10 FOR THE DEFENDANT:

11 JAMES L. SULTAN, ESQUIRE  
12 KERRY A. FERGUSON, ESQUIRE  
Rankin & Sultan  
13 1666 Massachusetts Avenue  
Suite P-16  
14 Lexington, Massachusetts 02420  
617.720.0011  
jsultan@rankin-sultan.com  
15 khaberlin@rankin-sultan.com  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

P R O C E E D I N G S

(The following proceedings were held in open court before the Honorable Allison D. Burroughs, United States District Judge, United States District Court, District of Massachusetts, at the John J. Moakley United States Courthouse, 1 Courthouse Way, Boston, Massachusetts, on September 17, 2020.

The defendant, Diovanni Carter, is present with counsel. The Assistant U.S. Attorney is present.)

THE CLERK: This is criminal matter 19-10104, United States versus Diovanni Carter. Will counsel identify themselves for the record.

MR. MALLARD: Good morning, Your Honor. Philip Mallard for the United States together with Glenn MacKinlay.

MR. SULTAN: Good morning, Your Honor. James Sultan with Kerry Ferguson for the defendant.

THE COURT: All right. We are here for Mr. Carter's sentencing. I will tell you that this is the first proceeding I've done in person since they reconfigured the courtroom. I'm doing it with a mask on. I think I'm being amplified adequately, but if for any reason anyone is having any trouble hearing me or you need me to repeat anything, just raise your hand or let me know, and I'll do that. This is new and I'm feeling my way like everybody else.

1           In preparation for today's sentencing, I have  
2       received and read the presentence report as revised on  
3       July 9 -- is that July 9? I can't read my own handwriting  
4       September 9, 2020; the defendant's sentencing memorandum  
5       which was filed on 9/11; the government's sentencing  
6       memorandum which was filed also on 9/11; I have read all of  
7       the attachments to both sentencing memorandums which included  
8       several letters filed on behalf of the defendant; some other  
9       paperwork from both sides. And I have read and received the  
10      two victim impact statements. Also I've listened to the  
11      recordings that the government submitted.

12           That's my list of what's been submitted and what I  
13      should have read and considered. Does anybody think I'm  
14      missing anything? Mr. Mallard, Mr. MacKinlay?

15           MR. MALLARD: I think that is it.

16           THE COURT: Mr. Sultan?

17           MR. SULTAN: Nothing else.

18           THE COURT: Probation?

19           THE PROBATION OFFICER: No, Your Honor. You have  
20      everything.

21           THE COURT: I take it nothing has been withheld  
22      from the presentence report?

23           THE PROBATION OFFICER: No, Your Honor.

24           THE COURT: Mr. Sultan, have you gone over it with  
25      your client?

1 MR. SULTAN: Yes, Your Honor.

2 THE COURT: Mr. Carter, have you had ample  
3 opportunity to review the presentence report and discuss it  
4 with your lawyer?

5 THE DEFENDANT: Yes.

6 THE COURT: If you guys want to stand up and sit  
7 down because you're trying to get your steps in, go ahead.  
8 If it's easier to stay seated, that's fine, too. I'm not  
9 going to stand on ceremony about that.

10 There are numerous objections to the presentence  
11 report. By my accounting, Mr. Sultan, I have read and taken  
12 notice of objections one through nine and don't think there  
13 needs to be anything further resolved or discussed. Is there  
14 any one of those you would like me to dive into in more  
15 depth?

16 MR. SULTAN: I'll just look for a second.

17 THE COURT: Do you want me to go through them one  
18 at a time and tell you what they are if they're not in front  
19 of you?

20 MR. SULTAN: No. I can see where they are. Only  
21 to the extent one through nine, Your Honor, refer to the  
22 facts underlying objection eleven, which is the four points  
23 for leadership. If the Court wants to deal with that all at  
24 once, there's no reason to consider the others individually.

25 THE COURT: Right. That's my intention, to deal

1 with ten which goes to the six point enhancement and then  
2 eleven which goes to the role enhancement. And I think that  
3 once we resolve those two, the others largely take care of  
4 themselves.

5 MR. SULTAN: Agreed.

6 THE COURT: So with regards to number ten, which  
7 goes to the six-level increase in the offense level based on  
8 the assault on a law enforcement officer, I'm happy to hear  
9 you on it, Mr. Sultan. But I think that that six points is  
10 properly applied, and I am -- that objection is going to be  
11 denied. To the extent that there's -- you want to make the  
12 argument around this, I think it's more appropriately made in  
13 your sentencing recommendation rather than in the guideline  
14 calculation.

15 MR. SULTAN: That's fine, Your Honor. I just want  
16 to make it clear to preserve that issue and that objection.

17 THE COURT: Yes.

18 MR. SULTAN: For the record.

19 THE COURT: Yes. So the six points will stay as  
20 is. You also have on objection 11 to the four-level increase  
21 for the role in the offense. After giving that some thought,  
22 I'm happy to hear the government on this one. The  
23 government's position is well-founded, and I take their point  
24 about the other two individuals, Mr. Boddie and Mr. Noons.  
25 But based on the evidence that I saw at trial, I am not

1 prepared to say that there were five other people involved in  
2 the offense. So instead of applying the four-level  
3 enhancement on role, I'm going to apply a two-level  
4 enhancement on role. But if you want to be heard on that for  
5 the record, Mr. Mallard or Mr. MacKinlay, this is your  
6 opportunity.

7 MR. MALLARD: Your Honor, I would pass on that.  
8 But I would just basically incorporate the arguments that I  
9 made on pages 6 through 10 of my memorandum in support of  
10 sentencing.

11 THE COURT: As I say, it's not a crazy position for  
12 the government to take, but it seemed to me to be a very  
13 close call. And when I feel like there's a close call like  
14 that, it goes to the runner, which in this case is the  
15 defendant. I think someone called it, it may have been  
16 probation called it, a strong inference of the participation  
17 of the other two. There is certainly an inference there, but  
18 I wasn't convinced it was a strong enough to get over the  
19 hurdle of preponderance of the evidence. But I do think he  
20 satisfies the criteria for the two-point role enhancement,  
21 and I am going to apply that.

22 So with regards to objection 12 which is  
23 Mr. Sultan's calculation where he asked that it be a 25 and  
24 not a 35, it's going to be a 33 rather than a 35. Thirteen I  
25 don't think needs to be resolved. I've taken note of it.

1 Same with 14. Fifteen, 16 and 17 have been taken care of by  
2 amendments to the report. And 18 again is the math total  
3 where Mr. Sultan is objecting to the 35, and again that's to  
4 a 33. So that is by my accounting a resolution of all the  
5 objections.

6 Does anybody want to be heard or comment further on  
7 any of those before we move on?

8 MR. MALLARD: No, Your Honor.

9 MR. SULTAN: No, Your Honor.

10 THE COURT: With those rulings in play, the  
11 guideline calculation, I'm going to run through it, but it's  
12 essentially the guideline calculation in the presentence  
13 report minus two points based on my ruling for role. So  
14 that's a 20-point base offense level. Two points for the  
15 injury to the store manager, one point for loss, six points  
16 on the victim enhancement, two points for role, two points  
17 for obstruction which gets us to a 33.

18 Criminal history points are 10 which puts him in a  
19 Criminal History Category five. That comes to a guideline  
20 range of 210 to 262 months, a supervised release range goes  
21 up to three years on Counts 1 and 2, five years on Count 3.  
22 The fine range, I think, is \$35,000 to \$350,000. I don't  
23 believe restitution is an issue, and the special assessment  
24 would be \$300, which is \$100 on each count.

25 The government, Mr. Sultan, probation, do I have



1       that calculation correct?

2               MR. MALLARD: Your Honor, I believe you have the  
3 guidelines correct with respect to the 33 and category 5.

4               THE COURT: Mr. Sultan?

5               MR. SULTAN: It's correct, Your Honor.

6               THE COURT: Got that right?

7               THE PROBATION OFFICER: Correct.

8               THE COURT: Excellent. Mr. Mallard or  
9 Mr. MacKinlay, the government's recommendation, please.

10              MR. MALLARD: Your Honor, the government is  
11 recommending the low end of the guidelines, and we do object  
12 to essentially the Court's finding of the plus two versus the  
13 plus four. We are recommending the low end. I think in this  
14 case -- Obviously the memorandum was submitted with the  
15 guidelines being higher at a 382 months, but we would be  
16 recommending the low end of the guidelines as calculated by  
17 the Court which is 330 months to 382 months as currently  
18 stated by the Court's calculation.

19              THE COURT: Hold on. You're essentially  
20 recommending 210 months which is the guideline range plus the  
21 120 months on and after which gets you to 330?

22              MR. MALLARD: That's correct, Your Honor. Give me  
23 one moment. I'm going to do the math on how many years that  
24 is.

25              It's essentially 27 and a half years, Your Honor.

1 While the government's argument in the memorandum certainly  
2 reflected the 31 number, we would be looking for 27 and a  
3 half as currently calculated by the Court.

4 THE COURT: Okay.

5 MR. MALLARD: We also have Officer Robinson is here  
6 to allocute, and I would like to read Mr. Dertelus' victim  
7 impact statement into the record if possible.

8 THE COURT: I would formally let Mr. Sultan make  
9 his recommendation and then circle back to the victims. But  
10 Mr. Sultan, do you have any objection to doing the victims  
11 now and then you make your recommendation?

12 MR. SULTAN: Of course not, Your Honor.

13 THE COURT: All right. Go ahead, Mr. Mallard.

14 MR. MALLARD: Your Honor, I would first read  
15 Mr. Dertelus' statement. Just so the Court is clear and the  
16 record is clear, Mr. Dertelus is the store clerk who was in  
17 the store at the time of the robbery. He states as follows:

18 "The incident that had taken place on January 26,  
19 2019, has impacted my life both personally and  
20 professionally. I recently began to learn how to manage my  
21 personal anxiety. The incident that took place at  
22 approximately 7:11 p.m. continues to shock me because it is  
23 something I would only watch happen to innocent people on TV.  
24 This has now become my reality. I'm writing this statement  
25 on September 3, 2020. It has now been a year and seven

1 months since this incident took place, yet it continues to  
2 cross my mind bitterly every day. How could I let this  
3 happen? I felt an overarching feeling of helplessness. The  
4 area I was working was known for having crimes around the  
5 area. This was one significant factor in deciding whether I  
6 wanted to accept this promotion for work or not. I'm a calm,  
7 laid back individual, and I am the type to help and to give  
8 to others when I can. Since this took place, I have worked a  
9 lot less closing shifts. I am seeking a remote opportunity  
10 somewhere where I'd be moving around a lot. I would rather  
11 work safely from my home.

12 "On days that I am closing, the incident would  
13 continuously hover and constantly play in my mind. Not only  
14 did this incident impact me, but it has impacted my close  
15 friends and family. They worry about me daily, my mental  
16 health, constantly checking in to see if I am all right. I  
17 can wake up every day and wear this smile attempting to keep  
18 a positive energy around others. I cannot get over how my  
19 life could have been taken from me only because I woke up  
20 that Saturday morning and decided to go to work.

21 "I continue to be very angry that this happened to  
22 me. There's nothing I can do about that life altering  
23 experience. I can only think positively for myself and  
24 continue to strive to become a better person than I was the  
25 day before. All the suspects in the incident should be held

1 accountable regardless of whether they were inside the store  
2 or not. I've decided not to appear at today's sentencing  
3 simply because this is something I will never forget, and I  
4 want to put this behind me. I'm trying to move forward with  
5 my life.

6 "I'm a person that holds everything in and finds my  
7 own way in dealing with my issues. Like most people I wake  
8 up and get ready to make my day better than my last. I go to  
9 work and prepare for a better tomorrow, but it seems that  
10 this incident has put a significant shadow of despair on me  
11 mentally. I come from a background where I was taught the  
12 importance of hard work and that it would always pay off  
13 in the long term. Growing up my parents made sure our family  
14 did not grow up around a violent neighborhood. They made  
15 sure we received an education.

16 The examples are that at my age having leadership  
17 positions, being a manager in a retail sales environment.  
18 The average person may not take on their day as seriously as  
19 I do. I'm always ready to tackle a new challenge and get  
20 another achievement. I am always looking out for others, and  
21 I always try my hardest in supporting people in the best way  
22 I can.

23 "As for the defendant, all I can say is I hope you  
24 do better with yourself, your future, and make something  
25 positive with your life. I did not have any foresight of

1       what happened on that day, and unfortunately I cannot  
2       forget."

3               THE COURT: And the officer is here as well?

4               MR. MALLARD: He is, Your Honor.

5               THE COURT: He's welcome to make his statement  
6       also.

7               MR. MALLARD: From the witness stand?

8               THE COURT: Wherever he wants. That one is clean,  
9       and that one is clean. So take your pick. Can you please  
10      identify yourself for the record.

11              MR. ROBINSON: My name is Silverson Robinson. I'm  
12      an officer at Brockton Police. Good morning. I've been a  
13      police officer in Brockton for 22 years. I came to the U.S.  
14      from Barbados. My family is here today. I was ten years  
15      old. After a short period of time in Boston living we moved  
16      to Brockton. After graduating from Brockton High, I served  
17      four years in the Navy as an Electrician's Mate Third Class.  
18      I was honorably discharged, proud of my service to this  
19      country that took me in and my family.

20              "I started with the Brockton Police six years later  
21      in '98. I've been married to my wife for 26 years. I have  
22      four children, Your Honor. Three boys, one girl. My eldest  
23      son is an electrical engineer. My second is an accountant.  
24      He's going to be 27 at the end of the month. My second  
25      oldest just turned 24. I have two other children. They're

1 both still in college. And what I do I do for them, I do for  
2 you, and I do for the community. I work nights as a  
3 patrolman for 21 years, never worked days but one year. My  
4 wife and children have dealt with the difficulty of my hours  
5 and stress of my job. I've been struck twice by vehicles.  
6 I've even been jumped on, no apparent reason. I spent many  
7 nights away from my family. I've dealt with difficult calls.  
8 I've responded to many dead bodies, and I've helped victims  
9 along the way in violent crimes. This is the first time I've  
10 been shot at.

11 "On January 26, 2019, on the eve of my daughter's  
12 birthday, I left home and went to work for my usual 4 to 12  
13 shift. You left home, sir, with the intention of committing  
14 a crime. Sometime during that night our paths crossed while  
15 performing my duties and yours while engaged in criminal  
16 activity. During the commission of your crime, I attempted  
17 to stop you, but you decided that you would not let me or  
18 anyone else stop you from getting away. That decision  
19 resulting in shots being fired at me and the cruiser I was  
20 operating.

21 "You obviously did not care if it had taken my life  
22 or injured me in any way. Your only concern was getting away  
23 from me and my fellow officers. You wanted to get away  
24 without having to be held responsible for your foolishness  
25 and criminal decision. The night after you were apprehended,

1 I continued working. The night after your friends were  
2 apprehended, I continued working as usual until the end of my  
3 shift thinking that I was fine. As we can see, I'm not fine.

4 "While driving home I started reflecting on  
5 everything that had occurred. Just the thoughts made me  
6 begin to shake like I am now. The reality of what had taken  
7 place, what could have happened came into mind. The reality  
8 that you were willing to kill me, an officer, to escape. The  
9 next day while sitting in church, it was Saturday, Sunday  
10 morning, the full impact of your reckless actions fully hit  
11 home. I had to leave and go home because again I couldn't  
12 stop shaking. I kept thinking over and over that you would  
13 have taken my life without thought or hesitation. It would  
14 never have bothered you one bit if any of those bullets had  
15 entered the cruiser and into my body and ended my life.

16 "I started thinking and still up to this day think  
17 of all that you would have robbed me and my family of. You  
18 would have taken away my opportunity to grow old with my wife  
19 and enjoy my retirement in my older years, the opportunity to  
20 watch my children grow and accomplish their dreams, the  
21 opportunity to see grandchildren to be born, and to be there  
22 for my parents as they got older and needed assistance.

23 "One year, eight months later I am still affected  
24 by your actions of that night. I become nervous when faced  
25 with certain situations, and my anxiety level is much higher

1 than it ever was before. I am less trusting, more conscious  
2 of where I am and what is going on around me, especially  
3 while at work.

4 "Today I noticed there's cameras on the train.  
5 Why? I don't know. I'm not going to stand here and pretend  
6 to be big bad cop. My children will tell you that I'm not.  
7 I give everybody a fair shake. January 27, 2019, I was  
8 afraid, very afraid, the kind of fright that is hard to  
9 describe. You endangered my life and could have taken it  
10 along with all that matters to me, my loved ones. I have  
11 come to terms and accepted what took place that night has  
12 affected me. It will for a long time. But I will not let it  
13 define the person that I am, and I will continue to persevere  
14 and grow from it.

15 "I am here today to inform you I am still on the  
16 job. I am still working to take people like you off the  
17 streets. I will not let your actions deter me from my main  
18 objective as a law enforcement officer to patrol the streets  
19 of Brockton and protect innocent citizens from criminals like  
20 you, criminals whose only objective is to get what they want  
21 without regard for anyone or anything, but their own selfish  
22 desires.

23 "Today I will leave here and return to my career.  
24 I will leave here and go home with my loved ones, to continue  
25 to celebrate more birthdays. My daughters and my son and I



1 will spend time and celebrate life and those that I care  
2 about and care about me. I will continue my life. You, on  
3 the other hand, will not have the opportunity to return home  
4 and you will not be able to return to your loved ones.

5 "I say this, Your Honor, I know what I signed up  
6 for. I'd do it again. But we must make a decision on what's  
7 going to happen today. I thank you for listening to me. And  
8 I thank the U.S. Attorney's Office. Thank you."

9 THE COURT: Thank you, Officer Robinson. I know  
10 those victim impact statements are not an easy thing to do.  
11 Mr. Sultan, your recommendation, please.

12 MR. SULTAN: Thank you, Your Honor. I'll do my  
13 best to speak through the mask. I will take Your Honor's  
14 offer on remaining seated if that's okay.

15 Your Honor, based on the sentencing memoranda  
16 submitted last Friday, this is the biggest disparity in  
17 sentencing recommendations I've ever encountered in 40 years  
18 of practicing law in this court. And I acknowledge that the  
19 government today has reduced its recommendation from 32 years  
20 to 27 and a half years. But I don't think -- I don't think  
21 that really changes the thrust of the comments I'm about to  
22 make.

23 Many years ago I clerked for a federal judge who  
24 told me that sentencing is the hardest part of the job. Such  
25 a grave decision, such an exercise of power over another

1 human being to take away a person's liberty and decide as a  
2 matter of judicial discretion how long that individual will  
3 be locked up in a cell, deprived of his family, his friends,  
4 fresh air, a glimpse of the sky and all of the other  
5 pleasures of life large and small that we take for granted.

6 I certainly don't suggest that sentencing Diovanni  
7 Carter will be an easy decision for Your Honor in this case,  
8 but it's such an important decision. Now, with respect to  
9 the offense conduct, Your Honor, I'm not going to belabor  
10 that because Your Honor presided over the trial.

11 I do want to acknowledge that, as is quite obvious,  
12 this was not a victimless crime. Both Officer Robinson and  
13 Gary Dertelus were both doing their jobs. They were both  
14 severely traumatized by what happened. No one should have to  
15 go through that. And Mr. Carter must be held jointly  
16 responsible for what happened and for the consequences of  
17 those actions. Fortunately, no one was seriously hurt, but  
18 that doesn't change the fact that this was a serious crime.

19 Your Honor has done the guideline calculation, and  
20 I'm not going to talk about that anymore other than to note  
21 the guideline calculation including the consecutive 924(c)  
22 sentence on its face involves double counting or even triple  
23 counting because the defendant is getting multiple points  
24 added for what amounts to the same action of shots being  
25 fired during the flight. And while that may be perfectly

1 appropriate and lawful under current legal precedent, what it  
2 means is that the guideline calculation ends up overstating  
3 the seriousness of the offense. And beyond that, Your Honor,  
4 the case *Dean*, the Supreme Court's case in *Dean*, which I  
5 cited in my memo, it's a very important case, Your Honor.  
6 And that case says very clearly that a sentencing court faced  
7 with substantive underlying crimes plus a 924(c) count should  
8 take the mandatory minimum piece into account in deciding how  
9 much more incremental punishment is necessary in order to  
10 come up with an overall sentence which is sufficient but no  
11 greater than necessary.

12 This was Chief Justice Roberts' decision. He gave  
13 an example which really struck me. He said in that case  
14 there was actually a 30-year mandatory minimum, I think,  
15 under 924(c), and he said there's nothing that prevents a  
16 judge from imposing a 30-year mandatory minimum under 924(c)  
17 and a 30-day sentence, I think he said, for the underlying  
18 offenses as long as they are imposed consecutively.

19 So the fact that there is a mandatory minimum and  
20 the fact that it has to be imposed consecutively does not  
21 mean that there is a ten-year bump. It doesn't mean that you  
22 figure out how much time is necessary for Mr. Carter to serve  
23 for his Hobbs Act violations and then just add another ten  
24 years.

25 *Dean* says that's not what the Court should do.

1 Yes, the Court has to obviously in this case impose the  
2 ten-year mandatory minimum. But the issue remains what is  
3 the overall amount of time that is sufficient but not greater  
4 than necessary in order to punish Mr. Carter for his crimes.

5 THE COURT: Can I interrupt you, Mr. Sultan? I  
6 don't totally understand your double counting argument or  
7 your triple counting argument. He gets two points for what  
8 happens in the store, right?

9 MR. SULTAN: I'm not talking about that, Your  
10 Honor. Yeah.

11 THE COURT: There's definitely the 924(c) on the  
12 shots being fired. But where else are you thinking that's  
13 being double counted?

14 MR. SULTAN: He gets the 924(c) for the shots being  
15 fired. He gets six additional points because the shots were  
16 fired at a law enforcement officer, and he gets two  
17 additional points because reckless conduct during the flight  
18 endangered other people.

19 So I understand that technically the way the  
20 guidelines are interpreted today, those just all get added on  
21 and that's all fine. But as a practical matter, he is  
22 being -- it's kind of a piling on, Your Honor, and he is  
23 being hit repeatedly for really the same exact offense  
24 conduct, which is other accomplices firing shots during the  
25 flight. I'm not making a legal argument. I'm making an

1 equitable argument.

2 THE COURT: I just want to really understand what  
3 you're saying. The chase could be the reckless conduct,  
4 right, irrespective of the shots being fired?

5 MR. SULTAN: It could be parsed that way, Your  
6 Honor. The mere fact that the car was driving, whatever, 70  
7 miles an hour within city limits, sure, I understand. It can  
8 be parsed that way. But in reality basically for the flight,  
9 for what happened during the flight he's being given eight  
10 points on the guideline calculation plus ten years. And  
11 that's an awfully heavy hit, and I submit that overstates the  
12 overall seriousness of the offense.

13 That's in essence the argument. But I think the  
14 *Dean* argument, Your Honor, is that you can't just figure out  
15 the proper sentence for the robbery conduct and then just add  
16 ten. *Dean* says that's not the way to do it. That's exactly  
17 what probation did, and that's exactly what the government is  
18 urging the Court to do. And I would urge the Court to follow  
19 *Dean* and reject that incremental approach for the more  
20 wholistic approach that the First Circuit has adopted really  
21 almost since *Kimbrough* but certainly over the past decade.

22 Your Honor, with respect to Mr. Carter's background  
23 and character, let me just speak about that for a few  
24 minutes, if I may. As the Court now knows, Mr. Carter  
25 experienced a terribly abusive childhood. He was beaten

1 regularly by his mentally ill, drug addicted mother. She  
2 tasered him. She struck him with objects. She neglected  
3 him. Imagine the impact of that betrayal on a young child.  
4 That was his upbringing.

5 Nevertheless, to Mr. Carter's credit, he has  
6 developed into a caring and involved parent to his own  
7 children. And I know the Court has read the letters. The  
8 letter of Shaatrona Sims, his fiancé, the letter of his  
9 grandmother, Nancy Carter, and the other letters which I  
10 think attest to those qualities.

11 So he's now 30 years old. He's an intelligent and  
12 articulate and a sensitive man. He has many years left.  
13 He's far from a lost cause. Whether he will spend most of  
14 the rest of his life in prison for this offense is really up  
15 to you. And I submit that he should not.

16 Now, let me talk about two particular guideposts  
17 that have sort of been used throughout the years with respect  
18 to sentencing. And those guideposts are proportionality on  
19 the one hand and avoiding unwarranted disparity on the other.

20 Let me first talk about proportionality. The  
21 government refers to Mr. Carter as a "top tier violent  
22 offender" suggesting that he, therefore, must be sent to  
23 prison now for 27 and a half years. That characterization  
24 just brought to my mind memories of a lot of other cases in  
25 this courthouse that I'm familiar with. Going way back to a

1 case I worked on back in the 1980's, the Angiulo case, where  
2 the leaders of the Boston mafia, who had led the Boston mafia  
3 for decades were tried before Judge Nelson. RICO case,  
4 numerous predicate murder offenses, Judge Nelson described it  
5 as "the most serious case I've ever sat on".

6 In 1986 at the end of that lengthy trial, Francesco  
7 Angiulo received a sentence of 25 years. Donato Angiulo  
8 received a sentence of 20 years. Sammy Greenough received a  
9 sentence of 20 years. Those people were top tier violent  
10 offenders.

11 And think of another case, more recent case, John  
12 Martorano, who admitted to being a hit man for the mafia and  
13 murdering 20 people. He became a government witness. He was  
14 sentenced in 2004 to 14 years. He was a top tier violent  
15 offender.

16 I think that the Court should consider other recent  
17 cases in this courthouse, different kinds of cases, serious  
18 cases involving rich, white defendants who have had  
19 opportunities in life that Mr. Carter could only dream of  
20 when he was being beaten and tasered by his own mother.

21 Consider, for example, a case Your Honor knows  
22 well, the Insys case. The longest sentence meted out after  
23 that lengthy trial, I believe, was 66 months. How many  
24 thousands of Americans died as a result of the criminal  
25 offenses committed by the defendants in that case? Consider

1 the Varsity Blues case. Dozens of wealthy privileged parents  
2 who bribed and cheated their children's way into elite  
3 universities. The sentences meted out in those cases ranged  
4 from probation up to I believe a maximum of nine months in  
5 prison.

6 Now, I understand no guns were discharged. No one  
7 was struck in the head. But as Woody Guthrie once wrote, and  
8 speaking about the bank robber Pretty Boy Floyd, "Some will  
9 rob you with a six gun and some with a fountain pen."

10 27 and a half years for Diovanni Carter, where is  
11 the proportionality in there?

12 The other principle I want to talk about, Your  
13 Honor, is the principle of avoiding unwarranted disparities.  
14 So what I did and submitted to the Court on that issue, which  
15 was illuminating to me was I provided to the Court as an  
16 exhibit to the sentencing memo a table of the 77 sentences  
17 meted out for robbery in this district over the past decade.  
18 I tried to get them all. I may have missed one or two, but I  
19 Was not cherry-picking. I'll tell the Court that.

20 In two-thirds of those cases, the sentencing judges  
21 downwardly varied from the guideline sentencing range. And  
22 not a single one of those 77 sentences, Your Honor, was  
23 longer than 272 months. Out of 77 cases. I understand every  
24 case is different. But does Diovanni Carter really deserve  
25 five more years in prison than every one of those other



1 robbery defendants in this courthouse over the past ten  
2 years? What the government is asking for is grossly  
3 disproportionate. It's way beyond the pale. It's out of  
4 line.

5 And finally, Your Honor, I need to talk about the  
6 proposed plea agreement in this case, which is something I  
7 ordinarily would not bring up after trial. But I have to  
8 bring it up. I understand that Mr. Carter decided not to  
9 sign that agreement. And instead he exercised his  
10 constitutional right to go to trial. And I understand the  
11 government, of course, is not bound by that unsigned  
12 agreement and is free to advocate for any sentence it wants.  
13 But there is something going on here which is truly  
14 disturbing and wrong.

15 Just before trial the government was prepared to  
16 characterize 8 to 14 years as a reasonable and appropriate  
17 sentence for Diovanni Carter in this case, 8 to 14 years.  
18 Now it says that a 27 and a half year sentence is necessary  
19 and appropriate for the very same offense conduct by the very  
20 same defendant. So what changed? It's obvious. Mr. Carter  
21 is being penalized by the government for going to trial, big  
22 time.

23 But, Your Honor, the criminal justice system isn't  
24 a game. It's not a hand of poker. The stakes are enormous  
25 and life altering. One of the factors in the sentencing

1 statute is general deterrence. Well, think about general  
2 deterrence and what the government is doing here. The effect  
3 of jettisoning up their sentencing recommendation from what  
4 they would have prepared before trial, so what they are  
5 recommending now is quite clear. It's to deter others from  
6 going to trial. It delivers that message loud and clear. If  
7 you go to trial and get convicted, you're going to get  
8 smoked.

9 That is a perverse message. It's a message that  
10 undermines criminal defendants' constitutional rights, the  
11 right to go to trial. It's only a small step from a system  
12 where the government tortures people until they confess.  
13 We're talking about -- we're not talking acceptance of  
14 responsibility, Your Honor. I understand there's a  
15 difference. But what they're doing here is doubling or  
16 tripling what they claim is a fair and appropriate sentence  
17 simply because Mr. Carter went to trial. And that's wrong.

18 In conclusion, Your Honor, sadly, there's nothing  
19 particularly unusual about this case. A young black man who  
20 suffered an abusive upbringing and a lousy childhood, started  
21 committing crimes at age 15 and now comes before the Court  
22 for sentencing for his participation in an armed robbery,  
23 like dozens of others with similar backgrounds who are  
24 sentenced in this courthouse every year for drug crimes, gun  
25 crimes, robberies, and the like. It's really sad for them,

1 for their families, for the community, for all of us.

2 I've been doing this work for a long time, Your  
3 Honor, and sometimes it just feels so hopeless, like such a  
4 waste, like we're all just cogs in a vast machine that grinds  
5 people to bits. A system where young black males are locked  
6 in elite prisons for decades until the very light of their  
7 humanity is snuffed out.

8 Yes, Diovanni Carter rejected that reasonable and  
9 appropriate 8 to 14 year plea and exercised his right to go  
10 to trial. Yes, he lost. But he shouldn't lose everything as  
11 a result. His life matters, too. These are just words. But  
12 Your Honor gets to decide through your sentencing decision  
13 what they mean. You don't have to sentence Diovanni Carter  
14 to 27 and a half years in prison. You shouldn't do it.

15 I urge you to adopt a 12-year recommendation we  
16 have submitted to the Court, a reasonable and appropriate  
17 sentence, which will afford Mr. Carter an opportunity to  
18 rejoin his family and his community after he spends more than  
19 a decade in prison to pay for his crimes. I urge the Court  
20 to recommend that he be designated to a facility as close as  
21 possible to Massachusetts so he can maintain a relationship  
22 with his children and his family; that he be recommended for  
23 RDAP entry; and that he receive credit, Your Honor, since  
24 March 5, 2019, which was the date he was originally taken  
25 into state custody for these very same offenses. I thank the

1 Court for listening.

2 THE COURT: He's been in federal custody since  
3 April 19, correct?

4 MR. SULTAN: That's correct, Your Honor. He was  
5 originally arrested by state authorities on state charges and  
6 the state charges were nolle prossed and the federal case  
7 went forward.

8 MR. MALLARD: I'd like to respond and also make my  
9 argument in support of sentencing as well.

10 THE COURT: You should have already done that. Let  
11 me just ask you, Mr. Mallard. It seems that month between  
12 March and April, that has been time that he's gotten no  
13 credit for.

14 MR. MALLARD: I agree he gets all credit since  
15 March 5.

16 THE COURT: March 5 or March 15? What did you say,  
17 Mr. Sultan?

18 MR. SULTAN: March 5.

19 MR. MALLARD: Your Honor, I'll start where the  
20 defendant ended, which is that there is nothing unusual about  
21 this case. I have a different perspective on that and the  
22 facts and the history in this cart for other cases and the  
23 facts for this case that that's simply not true. There are  
24 76 cases in the defendant's chart. He counts the Laperle  
25 case twice. Of those 76 cases there are only three trials.

1 There are 73 guilty pleas, 11 pleas to information. Of the  
2 three trials, all of those sentences in Brown, Rachal, and  
3 the other case is Patterson, the Court imposed a low end  
4 guideline sentence. And not a single one of those trials  
5 involved a shooting.

6 In fact, of all the cases that are in that chart,  
7 most of them are not jobs in banks. Most of them don't  
8 involve firearms. And all but one do not involve a firearm  
9 being fired. There's only one case where the firearm was  
10 shot. That's United States versus Hamilton. That's a case  
11 before Judge Zobel where she imposed a 168 month sentence on  
12 a plea with a defendant who did not shoot at the police.

13 In fact, the facts of that case are that the  
14 defendant in Hamilton was trapped in a vestibule that locked  
15 and was sort of a man trap. And the defendant in that case  
16 fired his gun to get out of that trap and he had the ten year  
17 from and after.

18 Looking at the history in this court, this  
19 defendant is in a category unto himself in terms of what he  
20 did in this case. In terms of leadership, what the facts are  
21 in terms of shooting at the police, the facts in terms of the  
22 victim being pistol whipped, and this defendant having a  
23 category five criminal history. There's only one other case  
24 that I'm aware of in this court where the defendant shot at  
25 the police during the course of a robbery, and that's United

1 States v. Rosado, which is before Judge Sorokin for  
2 sentencing next week. Even that case the defendant in there  
3 is completely distinct and the facts are completely separate  
4 from this. In Rosado there's one man, a bank robbery, and  
5 firing upon an officer who confronted him while he's leaving  
6 the bank. By comparison, this defendant engaged in a lengthy  
7 chase. In his attempt to evade the police, he specifically  
8 and intentionally ratcheted up the violence towards the  
9 police. It was a calculated decision. Even in that case,  
10 which is a plea, the low end of the guideline is 262 months.

11 The next thing I would like to talk about with  
12 respect to the defendant's memorandum and also what he argued  
13 is the nature of the plea offer. And I don't want to get too  
14 much into it because it's irrelevant. First, there's no  
15 aspect of the factors that would entitle this Court to look  
16 at what the government has purposely offered any more than  
17 the Court is entitled to look at what the defendant  
18 previously offered to plead to in terms of a number. If he  
19 had offered to plead to a greater sentence, the Court  
20 couldn't consider that either. It's immaterial and  
21 irrelevant to the Court's duties today.

22 Second, it should be excluded under Federal Rule of  
23 Evidence 408. There's a line of cases -- United States v.  
24 Verdoorn, 520 F.2d 193 under the Eighth Circuit; United  
25 States v. Alexander, 679 F.3d 721 out of the Eighth Circuit;

1 United States v. Jason, 612 F.3d 471 out of the Sixth  
2 Circuit; the United States v. Christianson, Arizona 2016  
3 Westlaw 1753600 at asterisk three. The Court should not  
4 consider prior plea offers in this context.

5 And in any event, Your Honor, if the Court happens  
6 to glance upon the plea agreement and what the offer was, the  
7 numbers there reflect a completely different set of operative  
8 facts. Not the same facts, same offense conduct that was  
9 offered. And he knows that because we had these negotiations  
10 and discussions. That plea agreement differs from what the  
11 guidelines are in this Court by the simple fact that he's not  
12 being -- in the agreement he's not held accountable for  
13 leadership, and he's also not held accountable for ordering  
14 the gun fire at the police. Those facts have demonstrably  
15 changed.

16 The fact that the government was willing to be  
17 reasonable and give him the opportunity to accept  
18 responsibility to a set of facts that did not come in some  
19 respect exclusively from the CW who testified with respect to  
20 ordering the gun fire, and the leadership was proven  
21 independently through documents, was largely predicated upon  
22 the cooperator's testimony. He was given the opportunity to  
23 plead to a set of facts that reflected that limited universe,  
24 and that changes the guidelines. And it also was an  
25 opportunity to plead to a mandatory minimum that was not the

1     ten.

2             So in this context, Your Honor, the seriousness was  
3     reflected in the agreement. We were looking for 14 years.  
4     The guidelines now without acceptance of responsibility and  
5     with the plus ten from and after, they're essentially in  
6     line. It would have been a 24 with the plus ten under that  
7     calculation with acceptance. But now he receives no  
8     acceptance and plus two for leadership, the swing of five and  
9     then five years from and after added to the five that he  
10    would have faced.

11            I'd also like to just briefly mention the double  
12    counting. There are two incidents involving the firearms.  
13    First, in the store with the gun being brandished and  
14    Mr. Dertelus being struck; and then the second incident where  
15    the gun fire happened. He receives no increase in the  
16    guidelines, I believe it's under (b)2, for use of the firearm  
17    even though he used them in two separate occasions.

18            He doesn't receive two 924(c)'s, although the facts  
19    support it. Because that would be 924(c) stacking, and that  
20    is no longer permissible under the law. To say he's being  
21    double counted, in fact, it's exactly the opposite. He's  
22    receiving the benefit of a combined 924(c) for arguably two  
23    separate instances that would qualify on their own. The  
24    924(c), even if the guns were never produced during the  
25    robbery, would have been satisfied by the shooting. If there



1 was no shooting, the brandishing, which was a seven, would  
2 have been satisfied by the robbery in the store by itself. I  
3 just don't understand what counsel is getting at because  
4 there is, in fact, no addition for the guideline.

5 I'd like to return back to my regular argument for  
6 sentencing, Your Honor. I'll just note with respect to the  
7 victim impact statements, Mr. Dertelus was 22 at the time of  
8 his testimony. He was 21 at the time of the incident. He  
9 was already the store manager. He references hard work and  
10 his dedication to making something of himself. He's a young  
11 man.

12 While in comparison, Officer Robinson is looking  
13 towards retirement. Both are hard working and serious  
14 individuals who take their jobs seriously. They were both  
15 met because of their hard work and diligence with gun play.  
16 Mr. Dertelus being struck, Officer Robinson being fired at.

17 What I want to just emphasize for the Court as the  
18 Court listens to Mr. Robinson's statement is he represents  
19 what's the best in law enforcement. He was fired upon  
20 multiple times in the heat of an incredibly difficult and  
21 stressful situation, chasing the suspects down. And as those  
22 doors flew open, the testimony was vivid, live, clear at this  
23 point he expected a gun fight. But he did not fire his gun  
24 afterwards. There was no additional fire from the Brockton  
25 Police at all that night.

1           They pursued these defendants, chased them down in  
2     the woods knowing that these defendants had already fired at  
3     them. And the level of restraint that they displayed that  
4     night represents the best of what law enforcement can be.  
5     The restraint, the professionalism, and I would submit to  
6     this Court the bravery and courage of Officer Robinson to get  
7     out of that car, chase them down, one man against four,  
8     knowing that they're willing to shoot, they're willing to  
9     fire, and they just did.

10           Nature and planning and circumstances of this case  
11    also merit the Court's attention. There were multiple trips  
12    to Brockton even just that day Googling the location,  
13    planning this out, preparation including other men. The  
14    Court heard direct testimony about recruitment, meeting up,  
15    gathering of firearms. And the men who were not just  
16    willy-nilly there. They had masks, gloves, they were  
17    readying to. They had a bag to carry the stolen goods in,  
18    and the firearms were loaded.

19           The execution of the plan was focused and  
20    disciplined. They drove directly there from Boston. They  
21    parked on a side street. They couldn't see the car and the  
22    quick escape into Brockton after the robbery demonstrated  
23    exactly the type of crime that this is. All in all, this was  
24    an extremely vicious robbery by multiple people coordinated  
25    by one individual, Diovanni Carter. The danger to the police

1 and community can't be overstated as well, Your Honor. There  
2 was a high speed chase in residential streets at night. The  
3 Court has the street view images of the tightness of those  
4 streets, extremely dense residential area. It captures every  
5 turn, acceleration, twist, every braking and speeding up,  
6 every turn onto major roads. A witness that the Court heard  
7 was at the dinner table on Summer Street with his family when  
8 he heard the gunfire outside his house. That was the moment  
9 when the defendant was ordering the shooting.

10 He wanted the police to be in a position where they  
11 wouldn't -- where the police wouldn't continue the chase, so  
12 they'd stop and the defendant could get away. And while no  
13 one was hit in terms of the police that night, there was a  
14 gun shot victim. His own brother was struck. Nothing about  
15 this crime was out of desperation or fear. This wasn't a  
16 situation where there was extensive drug addiction or some  
17 sort of bender that was being --

18 This robbery wasn't to get money for drugs. This  
19 wasn't money to pay rent or some other sort of desperate  
20 means or nature. This was extremely well planned. He had a  
21 reasonable car, multiple firearms, a cell phone that he was  
22 using extensively, Google account, to plan and prepare. And  
23 that fact alone also distinguishes this from essentially all  
24 of the robbery cases referenced by the defendant which are  
25 largely borne under substance abuse and problems in that

1     respect.

2             This defendant's criminal history and the past  
3     cases that are clear on his record indicates that this was  
4     not his first experience with violence and robbery and guns.  
5     He knew his way around firearms. His past convictions and  
6     even the arrests indicate he knows what they are. In fact,  
7     his Google search history had an extensive amount of gun  
8     searches. We had to exclude a lot of that Google search  
9     history because he was so interested in guns, it would have  
10    prejudiced the jury.

11            So to say it's not unusual, in fact, it really is.  
12    He was an enthusiast. He was enthusiastic about firearms.  
13    He was enthusiastic about his brother firing his firearm at  
14    Officer Robinson from the car as he said in the trial, and  
15    the trial testimony supported it, "Yeah, D, yeah, D", as his  
16    brother fired those shots.

17            There's one argument that the defendant can't make  
18    here, and that is this case is some sort of anomaly for the  
19    defendant or not reflective of his character. The criminal  
20    history again tells that story. In the past 15 years the  
21    defendant has been convicted of robbery, theft, firearms  
22    offenses, drug offenses, shootings, and even an arrest for  
23    murder. That's who this defendant is.

24            For a lesser defendant who was not top tier, these  
25    brushes with the law would have had a chastening effect,

1 especially those that don't result in conviction. Here they  
2 didn't. At some point all these different brushes and  
3 experiences reveal an insight into the character of the  
4 defendant and who he is. The insight is really simple. He  
5 will continue to do this.

6 I'd like to say this crime is the pinnacle of his  
7 criminal career, but it's not. He's been accused of greater  
8 crimes in courtrooms. And yet here we are. After being  
9 arrested for murder and avoiding it, I'm not saying he's  
10 responsible for that murder. It's simply not a conviction.  
11 It doesn't matter. But he sat in a courtroom with life  
12 without parole on the horizon, a prospect of that and he  
13 emerged clean. He beat that case. Now that was five years  
14 ago. Since then the criminal cases have only continued.

15 In fact, he seems emboldened given the number of  
16 serious cases that have happened since then over the past  
17 four years. The defendant in this case left his own brother  
18 behind bleeding in the woods on a below freezing night  
19 wearing sweat pants and a sweat shirt. He's chosen not just  
20 crime but violent crime and firearms time and time again.  
21 Just another instance where the defendant's enthusiasm for  
22 violence is clear, not just obvious from the case but also  
23 from the evidence.

24 Specific deterrence is also something the Court  
25 should consider, and it's a difficult concept. And I think

1 it's going to be extremely difficult for this Court to look  
2 at anything else except an extremely long sentence to satisfy  
3 specific deterrence considering the fact that the defendant  
4 has already faced extensively serious charges, beat them and  
5 here we are.

6 If you can face that on the horizon and prevail and  
7 still find yourself here for this crime, I'm not sure the  
8 threat of prosecution or lengthy sentencing will ever cause  
9 him to conform himself to the law. As a result, specific  
10 deterrence in this case needs to be delivered in the form of  
11 direct and experienced incarceration. Probation supervised  
12 release hanging over his head, these things clearly mean  
13 nothing to him and will mean nothing going forward.

14 He will continue to commit crimes and expects to  
15 face little to no punishment as he has in the past. General  
16 deterrence should also be of significant concern to this  
17 Court. Shooting at the police because they are the police in  
18 order to effect escape is at the peak of dangerousness. It  
19 borders on the edge of targeting law enforcement and to some  
20 respect the system itself. To target officers that you know  
21 are armed and necessarily must subdue an armed assailant  
22 loose in the community, it merely reveals the boldness of  
23 this defendant.

24 The sentence that you should impose should be  
25 mindful of the message sent. The government urges the Court

1 to err on the side of deterrence. I'm asking the Court to  
2 impose the low end of the guidelines here. 27 and a half  
3 years is a significant sentence. The government acknowledges  
4 that. This defendant has earned it, earned it through his  
5 criminal history, past, his convictions, what he's done since  
6 then, and what he did on that night. The Court should impose  
7 the low end of the guidelines in this case and impose a  
8 sentence of 27 and a half years.

9 THE COURT: Mr. Sultan, do you want to be heard  
10 again?

11 MR. SULTAN: I'll be brief, Your Honor. I just  
12 want to make two points if I may. Thank you. First, I  
13 understand why the government doesn't want to talk about the  
14 proposed plea agreement and wants Your Honor to ignore it.  
15 As I understand it, the rules of evidence don't apply to  
16 sentencing hearings. The facts did not change. All that  
17 changed is that the defendant exercised his right to go to  
18 trial. That's the only thing that changed.

19 Second point, Your Honor, Mr. Mallard just told the  
20 Court he will do this again. He doesn't know that any more  
21 than I know that he won't do this again. Nobody knows that.  
22 But if he's forced to spend more than 4,000 days in prison,  
23 hopefully that will persuade him. When he's in his 40s, when  
24 he gets out to go down a different road. That's really all  
25 that the system can hope for, and we can hope for, unless

1 he's just going to be locked up for the rest of his life and  
2 the government is coming basically as close as they can to  
3 trying to do that.

4 So I would urge the Court to ignore that prediction  
5 from the prosecution, which is really baseless. Thank you,  
6 Your Honor.

7 THE COURT: Mr. Carter, you have an opportunity to  
8 address me before I impose sentence if you want to.

9 THE DEFENDANT: Good morning to everybody. Good  
10 morning, Your Honor. The matter that gets us here today, you  
11 and every individual here including myself [indiscernible]  
12 encounter problems. At times we feel overwhelmed, and we  
13 feel all is failed. One thing I can say is all the  
14 situations are not made to be great. When you face that  
15 uncomfortable circumstance, it makes you take a step back and  
16 self reflect and it shapes you into the person you're going  
17 to be moving forward.

18 What each individual faces outside [indiscernible].  
19 In my mind regards with how much I used to worry about if I  
20 was going to die on the streets or not. My parents were  
21 absent the majority of my life. I lived carelessly. I  
22 eventually thought the world was against me. Being forced to  
23 grow up young and fast. I carried a lot of my childhood  
24 through my troubles. I was living on my own, sleeping in  
25 hallways, jumping house to house. One failed attempt after



1 another. I was struggling to figure out how I was going to  
2 eat every day, put clothes on my back. People in the streets  
3 accepted me for who I was and not who I was trying to be, so  
4 I believed that they loved me.

5 I pushed a lot of people out of my life not  
6 communicating with them for long periods of time. But in the  
7 back of my mind I thought my mother and my father would  
8 rescue me like super heroes and take away the pain and  
9 suffering. Because without them I wouldn't be here right now  
10 despite all of the failed attempts that my grandparents tried  
11 to make.

12 It's because of my parents, being now that I'm  
13 getting older and I've got a family of my own, I've done  
14 everything in my power to assure them that they are loved and  
15 well taken care of and not blind about false appearance.  
16 They restored in me what family and love is. Listening and  
17 communicating has been key dealing with them. It's one of  
18 the most valuable things in the world.

19 I don't know how to do everything right. I do a  
20 lot of things that ain't right. I know I do, Your Honor.  
21 I'm like everyone else though. I'm not better than anyone  
22 else. I'm just a human being just like you. I truly feel  
23 that this is a blessing in disguise so I can move forward.  
24 The journey has already begun, and I'm taking it and will  
25 continue to take steps to better myself because if I fail, my

1 family is going to fail, too. It has to start with me. Hard  
2 work doesn't happen overnight. It will pay off in the long  
3 term.

4 I appreciate all the love and support I've got from  
5 family and friends up to this point. It means a lot. I  
6 would like to thank my attorneys for the hard work and  
7 support as well. Thank you.

8 THE COURT: All right. I think you all know what  
9 my job is here. I need to consider and I have considered  
10 what a reasonable sentence would be in this case. In coming  
11 to that decision I considered the advisory guideline  
12 sentencing range, the nature and circumstances of the crime,  
13 Mr. Carter's personal and criminal history and  
14 characteristics, as well as the need for the sentence to  
15 reflect the seriousness of the offense, promote respect for  
16 the law, just punishment, adequate and general and specific  
17 deterrence and to avoid unwanted sentencing disparities as  
18 well as all the other factors set forth in 18 U.S.C. 3553(a).

19 I want to respond to some things that both sides  
20 have said. Mr. Sultan, as always you have done an incredibly  
21 energetic and thorough job for your client, and I think  
22 everybody in this room recognizes that you've done excellent  
23 work in this case. That being said, I have to disagree with  
24 some of the things that you said.

25 The situation here is sad. It's sad for a lot of

1 reasons. But this is not happening to Mr. Carter because he  
2 is a young black male. And although I need to concern myself  
3 with Mr. Carter and what the rest of his life is going to  
4 look like and what his family's life is going to look like, I  
5 also need to consider and take into account all of the other  
6 young black people that are out in the community trying to  
7 make lives for themselves and are doing it in the shadow of  
8 gun fire where they live.

9 No kid should have to worry about that, be them  
10 black, white, or any other color. I understand that Black  
11 Lives Matter is a cause celeb right now, and I fully embrace  
12 that. But I am also not going to be put in a position where  
13 I need to do things because people are young black males. I  
14 don't love the pressure coming in that direction. I think  
15 that there's no question that Mr. Carter has had a difficult  
16 life, and he talks now about self-reflection. But there have  
17 been many many opportunities for self-reflection along the  
18 way that he has not taken advantage of.

19 When I think about a sentence for him, it's clearly  
20 going to be a long sentence and a well-earned sentence here.  
21 But I feel pain for his grandmother, who I assume is sitting  
22 back there, and his fiancé and his children who are the real  
23 losers in this. That is on my mind. But it should have been  
24 on Mr. Carter's mind a lot sooner than it was. And he knew  
25 that he had kids and he had a family and that their futures

1 in many ways rode on his back, and he still nonetheless chose  
2 to go out and plan and execute that robbery.

3 Mr. Sultan, you said that the government is doing  
4 the best they can to put Mr. Carter in jail for the rest of  
5 his life. You said their recommendation is disproportionate  
6 and out of line. I'd like to say if they wanted to put him  
7 in jail for the rest of his life they could have recommended  
8 the top of the guideline range instead of the bottom.

9 I think it is difficult to argue that their  
10 recommendation is disproportionate and/or out of line when  
11 it's right in line with the guidelines that are imposed in  
12 this country.

13 And lastly -- I have two more things I want to say.  
14 Second to lastly, in terms of the plea agreement, there are a  
15 lot of good reasons for this Court not to consider a plea  
16 agreement, but I do feel that one aspect of it needs to be  
17 commented on. I was a prosecutor for a long time, and I was  
18 a criminal defense attorney for a long time, and I've seen  
19 both sides of this.

20 And I don't think it's fair to the government to  
21 characterize a different recommendation in a plea agreement  
22 as punishment for going to trial. Particularly with someone  
23 like Mr. Carter where the evidence against him was likely the  
24 weakest of all the co-defendants because he was the one that  
25 did not go into the store and wasn't on videotape.

1           So rather than being punishment for going to trial,  
2 I think a better characterization is that they were taking  
3 into account litigation risk. All of that being said, the  
4 sentence that they're asking for is a long one. I listened  
5 to what Mr. Carter said, and I do think that there is a  
6 measure of self-reflection in what he said. I also think  
7 there was a lot of self-reflection in the two victim impact  
8 statements. And I think those two men, Officer Robinson and  
9 Mr. Dertelus were very courageous to come forward and give  
10 the sorts of personal statements that they did. And I need  
11 to take that into account as well.

12           So Mr. Sultan, all of that being said, I hear you  
13 on your arguments. I don't think that there is inappropriate  
14 double counting. If there was anything that could be  
15 characterized as double counting, it would be the obstruction  
16 and the six level enhancement. And my sentence will reflect  
17 the fact that those two largely or somewhat overlap. The  
18 government is not inappropriate nor is probation having  
19 counted them separately.

20           I don't need to discount the sentence for that, but  
21 I am talk taking it into account. I also want to impose a  
22 sentence, Mr. Carter, that gives you some hope for the  
23 future. There's no question it's going to be a long  
24 sentence, but I want you to think about how you can improve  
25 yourself and how you can be there for your kids and the rest

1 of your family. I am going to sentence you to less than your  
2 attorney wants. Which I should also add, Mr. Sultan, it  
3 seems to me that you're asking for a lower sentence than he  
4 would have gotten in the plea agreement. Right? The plea  
5 agreement was --

6 MR. SULTAN: 8 to 14.

7 THE COURT: 8 to 14 and you're asking for 12 now.

8 MR. SULTAN: Yes.

9 THE COURT: You're asking for a lower sentence. As  
10 I said, I don't believe that the government is punishing him  
11 for going to trial, but I'm certainly not going to give him  
12 the benefit of acceptance of responsibility after. He is not  
13 going to get -- I think your recommendation is thoughtful but  
14 too low.

15 So this is what I'm going to do: Pursuant to the  
16 Sentencing Reform Act of 1984 and having considered the  
17 sentencing factors enumerated at 18 U.S.C. 3553(a), it is the  
18 judgment of the Court that the defendant, Diovanni Carter, is  
19 hereby committed to the custody of the Bureau of Prisons to  
20 be imprisoned for a term of 270 months. That term consists  
21 of 150 months on Counts 1 and 2 to run concurrently and 120  
22 months on Count 3 to be served consecutively. That's 150  
23 plus 120 which is 270.

24 I am going to make a judicial recommendation that  
25 the defendant attend vocational training, so that he can

1 enter the work force upon release. I am going to recommend  
2 he participate in the Bureau of Prisons RDAP program due to a  
3 substance abuse history and based on the informal  
4 prescreening that was performed by probation.

5 And I will recommend if he completes the RDAP  
6 program he be considered for the Bureau of Prisons  
7 Alternative Community Placement Program which will allow him  
8 to transition to a treatment setting as an alternative to a  
9 residential re-entry program. I will also make a judicial  
10 recommendation that he participate in the probation office's  
11 CARE program during the term of supervised release if he's  
12 deemed to be an appropriate candidate.

13 Upon release from prison he'll be placed on  
14 supervised release for a term of five years. That is three  
15 years on Counts 1 and 2, five years on Count 3, to run  
16 concurrently. Within 72 hours of release from the custody of  
17 the Bureau of Prisons the defendant shall report in person to  
18 the probation department in the district to where he is  
19 released.

20 I will judicial recommendation that he consider  
21 participation in the probation office's Restart program  
22 during supervised release if he's deemed to be an appropriate  
23 candidate. I'm not going to impose a fine as I don't think  
24 he has the ability to pay. No forfeiture in this case,  
25 Mr. Mallard?

1 MR. MALLARD: No forfeiture, Your Honor.

2 THE COURT: While under the probation office's  
3 supervision, the defendant shall comply with the following  
4 terms and conditions: The standard conditions. He can't  
5 commit another federal, state or local crime. You may not  
6 unlawfully possess a controlled substance. You may not  
7 unlawfully use a controlled substance. You'll be subject to  
8 a drug test within 15 days of release and at least two  
9 periodic drug tests thereafter not to exceed 104 tests per  
10 year. You'll have to give DNA samples as directed by the  
11 probation office and comply with any other standard  
12 conditions that are in place at the time of your release.

13 In terms of special conditions. You may not  
14 knowingly have any contact, direct or indirect, with the  
15 cooperating witness in this case. You are to participate in  
16 a program for substance abuse counseling as directed by the  
17 probation office with the same testing limitations we just  
18 discussed. That is, not to exceed 104.

19 You are prohibited from drinking alcohol to excess.  
20 Massachusetts State law which is currently .10 blood alcohol  
21 level. You must participate in a behavioral program as  
22 directed by the probation office. That can include group  
23 sessions led by a counselor or participation in a program  
24 administered by the probation office. You must participate  
25 in a vocational services training program as directed by



1 probation. That's for things like job readiness, training or  
2 skills developments.

3 You must use your true name and cannot use any  
4 falsifying information. And if you have the money, you're  
5 going to have to contribute to the cost of evaluation,  
6 treatment, and programming. If not, you don't need to.  
7 Special assessment of \$300. I am going to recommend that he  
8 be housed as close as possible to Massachusetts to allow him  
9 time with his family and children. And the date of the  
10 sentence will run from March 5, 2019, to give him credit for  
11 all of the time that he has spent in prison.

12 I want to make something else clear, Mr. Carter. I  
13 have wrestled with this. If anything, I erred on the side of  
14 too low. I've taken into account, to the extent there was  
15 double counting, I've taken into account your personal  
16 history. I thought very hard about the statement that  
17 Mr. Robinson and the other victim in this case made. I'm  
18 hoping that what I'm giving you, which is 22 and a half  
19 years, will be enough.

20 This case went to trial. I understand your  
21 attorney might appeal. And I want to make clear that if  
22 there is any disagreement with any of the rulings that I made  
23 in sentencing today that I fully believe that the 22 and a  
24 half years is an appropriate sentence. I've given long and  
25 hard thought to giving a longer sentence, but I think all

1 things considered that that is an appropriate sentence taking  
2 into account all the arguments of your counsel. If this  
3 comes back to me, I'm apt to impose the same sort of sentence  
4 because I think it's appropriate in the case to the extent  
5 that the guidelines allow me to do that. Anything else from  
6 the government?

7 MR. MALLARD: Not from the government, Your Honor.

8 THE COURT: Mr. Sultan?

9 MR. SULTAN: No, Your Honor.

10 THE COURT: Probation?

11 THE PROBATION OFFICER: No, Your Honor.

12 THE COURT: The case is recessed. Thanks,  
13 everyone.

14 (Court recessed at 10:30 a.m.)  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

-----

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

/s/ Joan M. Daly January 15, 2020

Date